

SENATE BILL 3268
By Fowler

AN ACT to amend Tennessee Code Annotated, Title 67, relative to economic and community development taxation incentives for certain technology endeavors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 1, Part 1, is amended by adding the following language as a new section:

§ 67-1-114.

(a) As used in this section:

(1) "Advanced computing" means technologies used in the design and development of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(2) "Advanced materials " means materials with engineered properties created through the development of specialized processing and synthesis technology, including but not limited to ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(3) "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into

useful processes and products or to develop microorganisms for specific uses.

(4) "Department" means the Tennessee department of revenue.

(5) "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(6) "Eligible investment project" means an investment project which either initiates a new operation in Tennessee, or significantly enlarges a current operation by expanding or equipping an existing Tennessee facility, for the primary purpose of pilot scale manufacturing or qualified research and development or for the commercial application of qualified research and development. The lessor or owner of the qualified building is not eligible for state taxation credit unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the taxation credit to the lessee in the form of reduced rent payments.

(7) "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(8) "Investment project" means an investment in qualified buildings within Tennessee or qualified machinery and equipment within such qualified buildings, including tangible personal property, labor and services rendered in the planning, installation, and construction or improvement of the project.

(9) "Pilot scale manufacturing" means activities performed in Tennessee relative to the design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, biotechnology, electronic device technology, advanced materials, and environmental technology other than for commercial sale. As used in this subsection, "commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars (\$1,000,000).

(10) "Qualified buildings" means construction of new structures within Tennessee, or expansion or renovation of existing structures within Tennessee, for the primary purpose of increasing floor space or production capacity in this state to be used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development.

"Qualified buildings" also includes construction of new structures within Tennessee, or expansion of existing structures within Tennessee, for the primary purpose of the commercial application of qualified research and development. If a building or machinery or equipment is used partly for pilot scale manufacturing or qualified research and development, or the commercial application thereof, and partly for other purposes, then the applicable state taxation credit shall be determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified commercial application" means the actual and practical utilization of qualified research and development within a Tennessee manufacturing or production facility in order to enhance the taxpayer's profitability. In order to constitute a "qualified commercial application" for purposes of this act; a commercial application project

must require directly related expenditures, in this state and by the taxpayer, in excess of five hundred thousand dollars (\$500,000).

(12) "Qualified machinery and equipment" means machinery, fixtures or equipment that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation in Tennessee. "Qualified machinery and equipment" also means machinery, fixtures or equipment that is an integral and necessary part of the commercial application within Tennessee of qualified research and development by a taxpayer who purchased such qualified research and development or who is commercially licensed, franchised or otherwise authorized to engage in the commercial application of such qualified research and development. "Qualified machinery and equipment" includes: computers; software; data processing equipment; laboratory equipment, instrumentation, machinery, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery.

(13) "Qualified research and development" means research and development performed in Tennessee in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, or environmental technology. In order to constitute "qualified research and development" for purposes of this act, a research and development project:

(A) Must require directly related expenditures, in this state and by the taxpayer, in excess of five hundred thousand dollars (\$500,000), or

(B) Must be the direct recipient of a small business innovation research program (SBIR) grant issued by an agency of the United States government acting pursuant to the Small Business Innovation Development Act of 1982, as amended.

(14) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(15) "Taxpayer" means a person, corporation or other business entity that engages in business activity in Tennessee and is liable for payment of sales and use taxes imposed pursuant to title 67, chapter 6, parts 1 through 6, as a direct result of such business activity.

(b)

(1)

(A) A taxpayer may receive state taxation credit equal to state sales or use taxes imposed pursuant to the provisions of title 67, chapter 6, parts 1 through 6, and paid by the taxpayer for qualified buildings or qualified machinery and equipment directly related to an eligible investment project for pilot scale

manufacturing or qualified research and development. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor in the case of a leased facility, contractors, and subcontractors on the construction or expansion of qualified buildings or on the acquisition of qualified machinery and equipment.

(B) A taxpayer may receive state taxation credit equal to state sales or use taxes imposed pursuant to the provisions of title 67, chapter 6, parts 1 through 6, and paid by the taxpayer for qualified buildings or qualified machinery and equipment directly related to an eligible investment project for the commercial application, in this state, of qualified research and development. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor in the case of a leased facility, contractors, and subcontractors on the construction or expansion of qualified buildings or on the acquisition of qualified machinery and equipment.

(2) Application for state taxation credit must be submitted to the department prior to initiation of the construction or expansion of qualified buildings and prior to the acquisition of qualified machinery and equipment. The application must be submitted in the form and in the manner prescribed by departmental rules. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and such other information required by the department. If the taxpayer cooperates fully with the department of revenue in submitting required information, then, acting in

consultation with the department of economic and community development, the department shall determine whether the proposed investment project constitutes an eligible investment project and shall rule on the application within sixty (60) days of submission of application.

(3) If the application is approved, then the commissioner of revenue shall issue a letter to the taxpayer stating that the taxpayer has tentatively met the requirements for state taxation credit authorized by this subsection.

(4) In order to receive the credit authorized by this subsection, the taxpayer must submit a claim for tax credit along with such documentation, as may be required by the commissioner, showing that Tennessee sales or use taxes have been paid to the state for qualified buildings or qualified machinery and equipment directly related to a eligible investment project.

(5) The commissioner shall review the claim for state taxation credit, shall notify the taxpayer of the approved tax credit amount, and shall provide direction for taking the tax credit. The taxpayer may not take the taxation credit until the commissioner has notified the taxpayer of the amount of taxation credit approved and has issued a letter or voucher reflecting such amount. The taxpayer may claim such taxation credit on any future tax return filed with the state of Tennessee in regard to the taxpayer's liability for excise taxes, franchise taxes, sales taxes or use taxes.

(c)

(1) If authorized by general enactment of the county legislative body, a taxpayer who receives state taxation credit pursuant to subdivision (b)(1) above may also receive county taxation credit from the county equal to the local option taxes imposed by the county pursuant to the provisions of title 67, chapter 6, part 7, and paid by the taxpayer to the

county for qualified buildings or qualified machinery and equipment directly related to an eligible investment project, within the county, for pilot scale manufacturing or qualified research and development. However, such county tax credit shall not extend or be applicable to any portion of local option taxes allocated exclusively for educational purposes.

(2) If authorized by general enactment of the county legislative body, a taxpayer who receives state taxation credit pursuant to subdivision (b)(1) above may also receive a similar tax credit from the county equal to the local option taxes imposed by the county pursuant to the provisions of title 67, chapter 6, part 7, and paid by the taxpayer to the county for qualified buildings or qualified machinery and equipment directly related to an eligible investment project, within the county, for the commercial application of qualified research and development. However, such county tax credit shall not extend or be applicable to any portion of local option taxes allocated exclusively for educational purposes.

(3) Application for the county taxation credit shall be submitted in accordance with the requirements and procedures set forth within the authorizing enactment of the county legislative body. If granted such county taxation credit may be claimed on any future tax return of the taxpayer that is filed with the county in regard to the taxpayer's liability for county taxes.

(d)

(1) If authorized by general enactment of the municipal legislative body, a taxpayer who receives state credit pursuant to subdivision (b)(1) above may also receive municipal taxation credit from the municipality equal to the local option taxes imposed by the municipality pursuant to the provisions of title 67, chapter 6, part 7, and paid by the taxpayer to the municipality for qualified buildings or qualified machinery and equipment directly related to an eligible investment project, within the municipality,

for pilot scale manufacturing or qualified research and development.

However, such municipal tax credit shall not extend or be applicable to any portion of local option taxes allocated exclusively for educational purposes.

(2) If authorized by general enactment of the municipal legislative body, a taxpayer who receives state taxation credit pursuant to subdivision (b)(1) above may also receive municipal taxation credit from the municipality equal to the local option taxes imposed by the municipality pursuant to the provisions of title 67, chapter 6, part 7, and paid by the taxpayer to the municipality for qualified buildings or qualified machinery and equipment directly related to an eligible investment project, within the municipality, for the commercial application of qualified research and development. However, such municipal tax credit shall not extend or be applicable to any portion of local option taxes allocated exclusively for educational purposes.

(3) Application for the municipal taxation credit shall be submitted in accordance with the requirements and procedures set forth within authorizing enactment of the municipal legislative body. If granted such municipal taxation credit may be claimed on any future tax return of the taxpayer that is filed with the municipality in regard to the taxpayer's liability for municipal taxes.

SECTION 2. On or before January 31, 2008, the commissioner of revenue and the commissioner of economic and community development shall jointly file a written report with the finance, ways and means committee of the senate; the commerce, labor and agriculture committee of the senate; the finance, ways and means committee of the house of representatives; and the commerce committee of the house of representatives. The report shall analyze the history and efficacy of this act and shall include findings and recommendations concerning the desirability of maintaining, amending or repealing this act. The commissioners are authorized to file such interim reports as may be desired.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect January 1, 2005, the public welfare requiring it.